

1 M.D. SCULLY (SBN: 135853)
mscully@grsm.com
2 TIMOTHY K. BRANSON (SBN: 187242)
tbranson@grsm.com
3 HOLLY L.K. HEFFNER (SBN 245384)
hheffner@grsm.com
4 MICHAEL D. KANACH (SBN 271215)
mkanach@grsm.com
5 GORDON REES SCULLY MANSUKHANI LLP
101 W. Broadway, Suite 2000
6 San Diego, CA 92101
Phone: (619) 230-7441
7 Fax: (619) 696-7124

8 MARC J. KESTEN (SBN: 152741)
Legal@VPXsports.com
9 VITAL PHARMACEUTICALS, INC.
1600 North Park Drive
10 Weston, FL 33326
Phone: (954) 641-0570
11 Fax: (954) 389-6254

12 Attorneys for defendant
VITAL PHARMACEUTICALS, INC., d/b/a VPX SPORTS
13

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 IN RE BANG ENERGY DRINK
17 MARKETING LITIGATION

Case No. 4:18-cv-05758-JST-RMI
(Consolidated with 4:18-cv-06300)

**[PROPOSED] ORDER GRANTING
DEFENDANT'S MOTION FOR RELIEF
FROM NONDISPOSITIVE PRETRIAL
ORDER OF MAGISTRATE JUDGE (ECF
82) AND DENYING MOTION TO
COMPEL THE TRADE SECRET BANG
FORMULA**

Complaint filed: September 19, 2018
Consolidated Class Action Complaint filed:
October 31, 2019

1 Defendants Vital Pharmaceuticals, Inc. d/b/a VPX Sports' ("VPX") moved for Relief from
 2 Nondispositive Pretrial Order of Magistrate Judge pursuant to Rule 72(a) of the Federal Rules of
 3 Civil Procedure and Civil L.R. 72-2, objected to the Honorable Robert M. Illman United States
 4 Magistrate Judge's order dated November 8, 2019 (ECF No. 82), and requested an order denying
 5 Plaintiffs' motion to compel production of documents responsive to request No. 30 because it
 6 requires production of VPX's complete and un-redacted confidential trade secret formula for the
 7 BANG® energy drink product. VPX objected to the following portion of the Order (ECF No. 82):

- 8
 9 1. Defendant is ordered within 21 days of entry of this order to provide Plaintiffs with
 10 documents concerning the formulations of the Bang energy drinks in response to
 11 Plaintiffs' Request for Production No. 30.

12 The Court, having read and considered the motion, including the Notice of Motion and
 13 Motion and objections, VPX's Memorandum of Points and Authorities attached thereto, the
 14 Declaration by Michael D. Kanach and exhibits thereto, the record before the Court, including
 15 the Parties' letter brief (ECF No. 77), the parties' informal oral argument (ECF Nos. 80-81), and
 16 the Magistrate Judge's Order (ECF No. 82), other filings by the Parties in this consolidated case,
 17 and upon such oral argument and written submissions that may be presented at, before, or in
 18 connection with the hearing on this motion, and for the reasons set forth in the record at the
 19 hearing, if any, the Court makes the following three findings:

20 **First**, VPX's formula is a proprietary trade secret and VPX has met its burden to show
 21 that the information sought in response to Request for Documents No. 30 are trade secrets or
 22 similar confidential information.

23 **Second**, VPX would be harmed by the disclosure of its trade secret formula to a
 24 competitor, particularly Monster, and by public disclosure of this information to undisclosed
 25 experts, at open hearings, and at trial.

26 **Third**, disclosure of VPX's secret formula is not necessary and Plaintiffs have not met
 27 their burden of showing otherwise. Because VPX disclosed that there is less than 40 mg of CLL
 28 and there is 300 mg of caffeine in a can of BANG®, the production of the formula is not
 necessary, and Plaintiffs' motion to compel production should be denied.

IT IS HEREBY ORDERED THAT:

1. Defendants' Motion for Relief from Nondispositive Pretrial Order of Magistrate Judge (ECF No. 82) is hereby GRANTED in its entirety.

2. Plaintiff's Motion to Compel (ECF No. 77) related to the formula is denied.

3. VPX is not compelled to produce documents to Plaintiffs concerning the formulations of the Bang energy drinks in response to Plaintiffs' Request for Production No. 30.

IT IS SO ORDERED.

Date: _____

JON S. TIGAR
Judge of the United States District Court

Gordon Rees Scully Mansukhani, LLP
2211 Michelson Drive, Suite 400
Irvine, CA 92612